HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

Civil Revision No. 26 of 2003

Sri Ram Punjabi & another

Vs.

Sri David Paul & another.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 07-8-2004.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Revision no. 26 of 2003

Shri Ram Punjabi & another ..... Revisionists

Versus

Shri David Paul & another ..... Respondents

Dated: 7.8.2004

Hon. Rajesh Tandon J.

Heard the learned counsel for the parties.

Present revision has been filed against the order dated 26.3.2003 passed the Additional District Judge, IVth Fast Track Court, Dehradun.

Briefly stated the facts giving rise to the present revision are that the plaintiff filed a suit for permanent injunction which is pending before the 4th Fast Track Court, Dehradun. In default of the defendant the suit proceeded ex parte. Defendants moved an application under Order 9 Rule 13 C.P.C. for setting aside the ex part decree dated 19.12.2000. The application was opposed by the plaintiffs by filing their objection. The application was rejected on 14.5.2001 and the plaintiff was directed to adduce ex part evidence. On 19.7.2001 again the defendants have moved an application for setting aside the order dated 14.5.2001. This application was also opposed by the plaintiff by filing objection. That application was rejected on 8.10.2001 and 15.10.2001 was fixed for ex parte hearing. The case was adjourned on various dates and from 12.7.2002 to 14.11.2002

the court was lying vacant. On 28.1.2003 the defendants did not appear in the Court and the Court fixed 30.1.2003 for ex parte hearing. On 28.1.2003 application was moved for setting aside the ex parte order dated 16.1.2003. Again on 20.3.2003 the defendants moved application which it still pending before the trial Court.

After perusal of the entire record of the case it is apparent that on several occasions the suit proceeded ex parte and ex parte orders were set aside but at present the Presiding Officer was of the opinion that justice requires that the matter may be heard finally and, therefore, he has framed issues and he has given one more opportunity to the defendants for contesting the case on merit.

The need of society is that there should be justice oriented approach and the application for setting aside the ex parte order should not be rejected only on the ground of technicalities. The Apex Court has held in (2001) 8 SCC 151, M.S. Grewal vs. Deep Chand Sood as under:

"Law Courts will lose their efficicacy if they cannot possibly respond to the need of the society-technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

In view of the aforesaid facts, I do not find it fit to interfere with the order passed by the trial Court. As the suit is old one, the Presiding Officer of the trial Court is directed to decide the suit finally within four months after the receipt of the certified copy of this order.

Subject to the aforesaid observation, the revision is dismissed. No order as to costs.

(Rajesh Tandon J.)

7.8.2004
*Dhyani